

★ APR 05 2019 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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KYLE FREISTAT,

Plaintiff,

MEMORANDUM AND ORDER

17-CV-6304 (RRM)

-against-

NYPD, *et al.*,

Defendants.

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MAUSKOPF, United States District Judge.

This is the second of two civil rights actions pending in this court and originally commenced in the United States District Court for the Southern District of New York (the “SDNY”), filed by plaintiff Kyle Freistat in September 2017, while he was detainee at the Brooklyn Detention Complex. Although the complaints in both actions were identical, the SDNY filed the complaints under separate docket numbers and transferred both cases to this Court separately. The first case was transferred by order dated September 27, 2017, was docketed as *Freistat v. NYPD*, No. 17-CV-5870 (RRM), and is still open. This action was transferred by order dated October 13, 2017, and has remained largely inactive ever since.

As a matter of judicial discretion, “a district court may stay or dismiss a suit that is duplicative of another federal court suit.” *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000) (citing *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). Accordingly, the instant action is dismissed without prejudice to the litigation pending in *Freistat v. NYPD*, No. 17-CV-5870 (RRM). Since this case was opened in error, plaintiff should not have been charged filing fees for this action. The Brooklyn Detention Complex is directed not to deduct any filing fees from the plaintiff’s inmate trust account for this action.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* is denied for the purpose of appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). The Clerk of Court is directed to enter judgment in accordance with this Order, to mail a copy of this Order to the *pro se* plaintiff and to the Superintendent of the Brooklyn Detention Complex, and to close this case.

SO ORDERED.

Dated: Brooklyn, New York

April 5 2019

/S/ **Judge Roslynn R. Mauskopf**

ROSLYNN R. MAUSKOPF
United States District Judge